

Jorgensen, Jay T.

From: David Page [dpage@riggsabney.com]
Sent: Thursday, January 24, 2008 7:39 PM
To: George, Robert W.
Cc: Jorgensen, Jay T.; Burns, Bryan; Mark_Quayle@cargill.com; James Graves; jgriffin@lathropgage.com; sjantzen@ryanwhaley.com; Gary Weeks; rredemann@pmrlaw.net; vbronson@cwlaw.com; bfreeman@cwlaw.com; dehrich@faegre.com; jelrod@cwlaw.com; rfunk@cwlaw.com; thill@rhodesokla.com; Jones, Tim; Hopson, Mark D.; Bond, Michael R.; rsanders@youngwilliams.com; Terry@thewestlawfirm.com; Webster, Timothy K.; jtucker@rhodesokla.com; pbuchwald@ryanwhaley.com; vmorgan@cwlaw.com; vrobinson@cwlaw.com; lphillips@cwlaw.com; Sperrazza, Quynh C.; lwhite@rhodesokla.com; gbarber@rhodesokla.com; Lawrence Zeringue; pthompson@bassettlawfirm.com; Dolan, Christopher H.; lrockwood@faegre.com; Jones, Bruce; Scott McDaniel; Nicole Longwell; Jinger Waller; kcarney@faegre.com; jwisley@cwlaw.com; kkobbeman@cwlaw.com; Craig A. Mirkes; Pilkington, Patrick; ljsoutherland@rhodesokla.com; Patrick Ryan; Melissa Keplinger; Louis Bullock; lward@motleyrice.com; Kelly.Burch@oag.ok.gov; Baker, Fred; David Riggs; Daniel Lennington; trevor.hammons@oag.ok.gov; Bob Nance; Richard Garren
Subject: RE: Oklahoma v. Tyson Foods, Inc., et al. - Deposition of Roger Olsen

Robert,

Based on your request we agree to reschedule Dr. Olsen's deposition to Saturday, February 2nd. We can begin at 9am at the offices of Riggs, Abney. Needless to say, we do not agree with the characterization of the facts and circumstances you set forth in the email below. As I noted in our conversation this morning Dr Olsen, as well as our other experts, continue to prepare their opinions in this case for trial. To the extent that this preparation is relevant to the opinions given at the Preliminary Injunction Hearing, Mr. Olsen very well might rely upon this additional information. The materials produced earlier this week did not modify Dr. Olsen's opinions for the Preliminary Injunction Hearing.

Thanks, David.

David P. Page
Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc.
502 W. 6th Street
Tulsa, OK 74119-1010
918-587-3161
918-583-1549 (fax)
dpage@riggsabney.com

This Email is covered by the provisions of the U.S. Electronic Communications Privacy Act. This communication may be protected by the attorney-client privilege and may contain confidential information. If it has been sent to you in error please reply to the sender that you received it and then delete the message. Any distribution or copying of this message other than by its intended recipient is strictly prohibited.

-----Original Message-----

From: George, Robert W. [mailto:Robert.George@KutakRock.com]

Sent: Thursday, January 24, 2008 11:45 AM

To: David Page

Cc: Jorgensen, Jay T.; Burns, Bryan; Mark_Quayle@cargill.com; James Graves; jgriffin@lathropgage.com; sjantzen@ryanwhaley.com; Gary Weeks; rredemann@pmrlaw.net; vbronson@cwlaw.com; bfreeman@cwlaw.com; dehrich@faegre.com; jelrod@cwlaw.com; rfunk@cwlaw.com; thill@rhodesokla.com; Jones, Tim; Hopson, Mark D.; Bond, Michael R.; rsanders@youngwilliams.com; Terry@thwestlawfirm.com; Webster, Timothy K.; jtucker@rhodesokla.com; pbuchwald@ryanwhaley.com; vmorgan@cwlaw.com; vrobinson@cwlaw.com; lphillips@cwlaw.com; Sperrazza, Quynh C.; lwhite@rhodesokla.com; gbarber@rhodesokla.com; Lawrence Zeringue; pthompson@bassetlawfirm.com; Dolan, Christopher H.; lrockwood@faegre.com; Jones, Bruce; Scott McDaniel; Nicole Longwell; Jinger Waller; kcarney@faegre.com; jwisley@cwlaw.com; kkobbeman@cwlaw.com; Craig A. Mirkes; Pilkington, Patrick; ljsoutherland@rhodesokla.com; Patrick Ryan; Melissa Keplinger
Subject: Oklahoma v. Tyson Foods, Inc., et al. - Deposition of Roger Olsen

David,

Thank you for your call this morning. I will call you shortly to follow up on this e mail, but wanted to get a written record of the situation and defendants' decision out there as soon as possible.

Defendants are striking the deposition of Roger Olsen scheduled for tomorrow, January 25, 2008 due to the untimely production of materials considered by Mr. Olsen. Plaintiffs were ordered to produce all materials considered by Dr. Olsen in connection with the opinions to be offered at the hearing on the preliminary injunction by no later than January 4, 2008 which was 21 days before his deposition scheduled for January 25, 2008. Dkt. No. 1425 (12/26/07 Order). Yesterday, while many of defendant's counsel were in Dr. Fisher's deposition, Plaintiffs delivered a CD of "additional materials" upon which Dr. Olsen is apparently now relying to support his opinions. Our initial review of the CD and our conversation with you this morning confirm that these materials are substantial in volume. Clearly, this production is untimely and Plaintiffs' emerging pattern of violations of the Court's orders regarding production of expert materials is severely prejudicing defendants' ability to work with its own experts and prepare an adequate defense to Plaintiffs' claim.

Defendants will likely seek emergency relief from the Court and request exclusion of the untimely produced materials and any opinions or analysis based upon those materials. Until that issue is ruled upon by the Court, Defendants cannot proceed with the deposition of Mr. Olsen. You and I discussed alternative dates for a possible rescheduled deposition of Mr. Olsen. You indicated that he could be deposed on February 2nd. I explained that this date would prejudice Defendants ability to meet the February 8 deadline for our response brief which we intend to support with expert affidavits. As you know, Olsen is foundational to several of the experts on the Plaintiffs' side and thus his materials and the completion of his deposition impacts numerous experts on the defense side of the case. For the time being, please hold February 2nd for a possible deposition of Olsen. In addition, please advise as to whether February 1 would be an alternative date of availability. Please understand that our willingness to discuss possibly rescheduling the deposition of Olsen is in no way a waiver of or intended to prejudice our right to seek relief from the Court.

Please advise on the scheduling issues at your earliest convenience.

Robert W. George
robert.george@kutakrock.com

ANY FEDERAL TAX ADVICE CONTAINED IN THIS MESSAGE SHOULD NOT BE USED OR
REFERRED TO IN THE PROMOTING, MARKETING OR RECOMMENDING OF ANY ENTITY,
INVESTMENT PLAN OR ARRANGEMENT, AND SUCH ADVICE IS NOT INTENDED OR
WRITTEN TO BE USED, AND CANNOT BE USED, BY A TAXPAYER FOR THE PURPOSE OF
AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE.

This E-mail message is confidential, is intended only for the named
recipient(s) above and may contain information that is privileged,
attorney work product or otherwise protected by applicable law. If you
have received this message in error, please notify the sender at
402-346-6000 and delete this E-mail message.
Thank you.

#####